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EISMAN, FORMATO, FERRARA,
WOLF & CARONE, LLP**

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Attorneys for Plaintiff YELLOWCAKE, INC., and Counterdefendants COLONIZE
MEDIA, INC., and JOSE DAVID HERNANDEZ

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

YELLOWCAKE, INC., a California
corporation,

Plaintiff,

v.

HYPHY MUSIC, INC.,

Defendant.

Case No.:

1:20-cv-00988-DAD-BAM

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
PLAINTIFF AND
COUNTERDEFENDANTS'
RULE 12(b)(6) MOTION TO
DISMISS DEFENDANT'S FIRST
AMENDED COUNTERCLAIMS**

Judge: Hon. Dale A. Drozd
Date: November 3, 2020
Time: 9:30 a.m.
Courtroom: Courtroom 5, 7th floor

HYPHY MUSIC, INC.,
 Counterclaimant,
 v.
 YELLOWCAKE, INC.; COLONIZE
 MEDIA, INC.; JOSE DAVID
 HERNANDEZ; and JESUS CHAVEZ SR,
 Counterdefendants.

INTRODUCTION

Plaintiff Yellowcake, Inc., (“Yellowcake”) and Counterdefendants Colonize Media, Inc., (“Colonize”) and Jose David Hernandez (“Hernandez”), respectfully request that pursuant to Rule 201 of the Federal Rules of Evidence, this Court take judicial notice of the U.S. Copyright Office records identified below, in connection with Plaintiff/Counterdefendants’ Motion to Dismiss Defendant/Counterclaimant Hyphy Music Inc.’s (“Hyphy”) First Amended Counterclaims.

The attached Documents, numbered 1-9, consist of records maintained and made publicly available online by the U.S. Copyright Office pertaining to the copyright registrations that are the subject of the First Amended Counterclaims that Plaintiff/Counterdefendants move to dismiss. Plaintiff/Counterdefendants have attached a copy of one or more of these records to the Declaration of Seth L. Berman, Esq., and Reply Declaration of Seth L. Berman, Esq., filed with the Plaintiff/Counterdefendant’s initial Memorandum and Reply Memorandum in support of this Motion to Dismiss. Printouts of the online Copyright Office Catalog records are attached to this Request as Documents 1-9 as follows:

1. A copy of the U.S. Copyright Office’s Online Catalog information for Defendant/Counterclaimant Hyphy’s Sound Recording Registration No. SR

0000869114 (**Exhibit “A”** to the Reply Declaration of Seth L. Berman, Esq., in support of Plaintiff and Counterdefendants’ Motion to Dismiss Defendant/Counterclaimant’s First Amended Counterclaims (also identified in Exhibit “B” to First Amended Counterclaims (ECF 15)).

2. A copy of the U.S. Copyright Office’s Online Catalog information for Defendant/Counterclaimant Hyphy’s Sound Recording Registration No. SR 0000876925 (**Exhibit “B”** to the Reply Declaration of Seth L. Berman, Esq., in support of Plaintiff and Counterdefendants’ Motion to Dismiss Defendant/Counterclaimant’s First Amended Counterclaims (also identified in Exhibit “B” to First Amended Counterclaims (ECF 15)).

3. A copy of the U.S. Copyright Office’s Online Catalog information for Defendant/Counterclaimant Hyphy’s Sound Recording Registration No. SR 0000820139 (**Exhibit “C”** to the Reply Declaration of Seth L. Berman, Esq., in support of Plaintiff and Counterdefendants’ Motion to Dismiss Defendant/Counterclaimant’s First Amended Counterclaims (also identified in Exhibit “B” to First Amended Counterclaims (ECF 15)).

4. A copy of the U.S. Copyright Office’s Online Catalog information for Defendant/Counterclaimant Hyphy’s Sound Recording Registration No. SR 0000810777 (**Exhibit “D”** to the Reply Declaration of Seth L. Berman, Esq., in support of Plaintiff and Counterdefendants’ Motion to Dismiss Defendant/Counterclaimant’s First Amended Counterclaims (also identified in Exhibit “B” to First Amended Counterclaims (ECF 15)).

5. A copy of the U.S. Copyright Office’s Online Catalog information for Plaintiff/Counterdefendant Yellowcake’s Sound Recording Registration No. SR 0000863319 (**Exhibit “E”** to the Reply Declaration of Seth L. Berman, Esq., in support of Plaintiff and Counterdefendants’ Motion to Dismiss Defendant/Counterclaimant’s First Amended Counterclaims (also identified in Exhibit “A” to Complaint (ECF 1)).

6. A copy of the U.S. Copyright Office's Online Catalog information for Plaintiff/Counterdefendant Yellowcake's Sound Recording Registration No. SR 0000864336 (**Exhibit "F"** to the Reply Declaration of Seth L. Berman, Esq., in support of Plaintiff and Counterdefendants' Motion to Dismiss Defendant/Counterclaimant's First Amended Counterclaims (also identified in Exhibit "A" to Complaint (ECF 1)).

7. A copy of the U.S. Copyright Office's Online Catalog information for Plaintiff/Counterdefendant Yellowcake's Sound Recording Registration No. SR 0000866471 (**Exhibit "G"** to the Reply Declaration of Seth L. Berman, Esq., in support of Plaintiff and Counterdefendants' Motion to Dismiss Defendant/Counterclaimant's First Amended Counterclaims (also identified in Exhibit "A" to Complaint (ECF 1)).

8. A copy of the U.S. Copyright Office's Online Catalog information for Plaintiff/Counterdefendant Yellowcake's Sound Recording Registration No. SR 0000863321 (**Exhibit "H"** to the Reply Declaration of Seth L. Berman, Esq., in support of Plaintiff and Counterdefendants' Motion to Dismiss Defendant/Counterclaimant's First Amended Counterclaims (also identified in Exhibit "A" to Complaint (ECF 1)).

9. A copy of the U.S. Copyright Office's Online Catalog information for Plaintiff/Counterdefendant Yellowcake's Recordation of Assignment of ownership of the Sound Recordings from Chavez, Document No. V9970D519 (**Exhibit "E"** to the Declaration of Seth L. Berman, Esq., in support of Plaintiff and Counterdefendants' Motion to Dismiss Defendant/Counterclaimant's First Amended Counterclaims (ECF 23-6)).

LEGAL STANDARD

Facts subject to judicial notice include those that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R.

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1 Evid. 201(b)(2). The Court “must take judicial notice if a party requests it and the court
2 is supplied with the necessary information.” Fed. R. Evid. 201(c)(2).

3 Courts regularly take judicial notice of “undisputed matters of public record [.]”
4 *Harris v. Cty. of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012) (internal citations
5 omitted); *see also*, *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001);
6 *Kurtz v. Intelius, Inc.*, 2011 U.S.Dist.LEXIS 101922, *3-*4 (E.D.Cal. Sept. 9, 2011)
7 and *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)). Such record
8 may include the “[r]ecords and reports of administrative bodies,” *Barron v. Reich*, 13
9 F.3d 1370, 1377 (9th Cir. 1994). A court may take judicial notice of information on the
10 Internet published and maintained by a government entity. *Daniels-Hall v. National*
11 *Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010). It accordingly has taken judicial
12 notice of Copyright Office records in the past. *See, e.g., Sybersound Records, Inc. v.*
13 *UAV Corp.*, 517 F.3d 1137, 1146 (9th Cir. 2008) (taking judicial notice of Copyright
14 Office records reflecting the registered owners of certain copyrighted songs);
15 *Oroamerica, Inc. v. D & W Jewelry Co.*, 10 Fed. App’x 516, n.4 (9th Cir. 2001)
16 (taking judicial notice of Copyright Office registration certificate); *Ajaxo, Inc., v. Bank*
17 *of America Technology and Operations, Inc.*, No. 207CV645GEBGGH, 2007 WL
18 4180361 at *1 (E.D. Cal. Nov 21, 2007) (taking judicial notice of Copyright Office
19 records showing transfer of ownership of copyright registrations).

20 Documents 1 through 9 are records from the online database compiled and
21 maintained by the United States Copyright Office, made publicly available on its
22 website. The Copyright Office records included in this request plainly meet the
23 standard for judicial notice set forth above. Information published and maintained by
24 the Copyright Office regarding the ownership and authorship of the copyrighted sound
25 recordings at issue in this litigation are clearly relevant to Plaintiff/Counterdefendant’s
26 Motion to Dismiss Defendant/Counterclaimant’s First Amended Counterclaims as
27 copyright ownership, proper acquisition thereof by written transfer, and validity of the

28 ///

1 copyright registrations serving as the statutory prerequisite to bringing an action under
2 the Copyright Act pursuant to Section 411 are at issue.

3 **CONCLUSION**

4 In sum, the records enumerated above meet the requirements of Rule 201(b)(2)
5 of the Federal Rules of Evidence, and therefore, it is respectfully submitted that the
6 Court must take judicial notice of them pursuant to Rule 201(c)(2) of the Federal Rules
7 of Evidence.

8 Dated: October 27, 2020

Respectfully submitted,

9 **ABRAMS, FENSTERMAN, FENSTERMAN,**
10 **EISMAN, FORMATO, FERRARA, WOLF &**
11 **CARONE, LLP**

12 By: /s/ Seth L. Berman

13 Seth L. Berman, Esq. (*admitted pro hac vice*)
14 *Attorneys for Plaintiff Yellowcake, Inc., and*
15 *Counterdefendants Colonize Media, Inc., and*
16 *Jose David Hernandez*

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP
3 Dakota Drive, Suite 300
Lake Success, NY 11042
Phone: (516) 328-2300 / Fax: (516) 328-6638

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system on this 27th day of October 2020, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those that are indicated as non-registered participants, if any.

/s/ Seth L. Berman
Seth L. Berman, Esq.

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP
3 Dakota Drive, Suite 300
Lake Success, NY 11042
Phone: (516) 328-2300 / Fax: (516) 328-6638

DOCUMENT 1

Copyright

United States Copyright Office

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Copyright Office Catalog is available. [More](#).

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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Copyright Number = SR0000869114

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Labeled View

Los Originales de San Juan - Corridos De Poca M...

Type of Work: Sound Recording**Registration Number / Date:** SR0000869114 / 2020-04-13**Application Title:** Los Originales de San Juan - Corridos De Poca M...**Title:** Los Originales de San Juan - Corridos De Poca M...**Description:** Electronic file (eService)**Copyright Claimant:** Hyphy Music, Inc. Address: 2727 N. Grove Industrial Dr., #155, Fresno, CA, 93727, United States.**Date of Creation:** 2015**Date of Publication:** 2015-02-24**Nation of First Publication:** United States**Authorship on Application:** Hyphy Music, Inc., employer for hire; Domicile: United States. Authorship: sound recording.**Rights and Permissions:** Hyphy Music, Inc., cj@hyphymusicinc.com**Copyright Note:** C.O. correspondence.

Basis for Registration: collective work.

Contents: El Carlichí.

Sin Fortuna.

El Fantasma.

Javier Fernandez.

El Original.

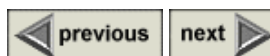
Manuel Gonzalez.

Amanda Varela.

Cuando No Se Nace Rico.

Mi Viejo.

Tan Solo Penas.

Names: [Hyphy Music, Inc.](#)Save, Print and Email ([Help Page](#))

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DOCUMENT 2

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Copyright Office Catalog is available. [More](#).

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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Copyright Number = SR0000876925

Search Results: Displaying 1 of 1 entries



Labeled View

Los Originales de San Juan - Nuestra Historia (En Vivo)

Type of Work: Sound Recording**Registration Number / Date:** SR0000876925 / 2020-08-02**Application Title:** Los Originales de San Juan - Nuestra Historia (En Vivo)**Title:** Los Originales de San Juan - Nuestra Historia (En Vivo)**Description:** Electronic file (eService)**Copyright Claimant:** Hyphy Music, Inc. Address: 2727 N. Grove Industrial Drive, #155, Fresno, CA, 93727, United States.**Date of Creation:** 2017**Date of Publication:** 2017-03-31**Nation of First Publication:** United States**Authorship on Application:** Hyphy Music, Inc., employer for hire; Domicile: United States. Authorship: sound recording of entire concert.**Rights and Permissions:** cj@hyphymusicinc.com**Copyright Note:** C.O. correspondence.**Contents:** El Rey del Cristal.

El Aguacatero.

El Patas de Diablo.

El Cara de Chango.

La Raza de Michoacan.

La Caspa del Diablo (ft. El Sinaloa)

La Troca del Mono Negro.

Deje de Engordar Maranos.

El Jardinero.

El Grande de Michoacan.

Rey de Reyes.

Pacas de a Kilo.

La Muerte de Manuelon.

El Corrido del Charapo.

Los Cuatro Amigos.

El Numero Gratis.

Names: [Hyphy Music, Inc.](#)



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Copyright

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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Copyright Number = SR0000820139

Search Results: Displaying 1 of 1 entries



Labeled View

Los Originales de San Juan - En Vivo Desde La Cantina de Mi Barrio.

Type of Work: Sound Recording**Registration Number / Date:** SR0000820139 / 2018-05-09**Application Title:** Los Originales de San Juan - En Vivo Desde La Cantina de Mi Barrio.**Title:** Los Originales de San Juan - En Vivo Desde La Cantina de Mi Barrio.**Description:** Electronic file (eService)**Copyright Claimant:** Hyphy Music, Inc. Address: 2727 N. Grove Industrial Drive, #155, Fresno, CA, 93727, United States.**Date of Creation:** 2017**Date of Publication:** 2017-03-24**Nation of First Publication:** United States**Authorship on Application:** Hyphy Music, Inc., employer for hire; Domicile: United States. Authorship: sound recording.**Rights and Permissions:** info@hyphymusicinc.com**Copyright Note:** Basis for Registration: collective work.**Contents:** Mi Ultimo Deseo.

La Peda.

Paloma En Su Nido.

El Morralito.

Me Llamen Lineas De A Metro.

Naci Con Suerte De Rey.

El Tequilero.

El Clavo.

El Jabali.

Con Una Copa En Mi Mano.

La Cantina De Mi Barrio.

El Carlichí.

Vida Prestada.

Fuiste Todo Para Mi.

Eladio Mora.

Names: [Hyphy Music, Inc.](#)



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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Copyright Number = SR0000810777

Search Results: Displaying 1 of 1 entries



Labeled View

Los Originales de San Juan - El Campesino.

Type of Work: Sound Recording**Registration Number / Date:** SR0000810777 / 2017-03-17**Application Title:** Los Originales de San Juan - El Campesino.**Title:** Los Originales de San Juan - El Campesino.**Description:** Compact Disc.**Copyright Claimant:** Hyphy Music, Inc., Transfer: By written agreement. Address: 2660 West Shaw Lane, Suite 110, Fresno, CA, 93711, United States.**Date of Creation:** 2016**Date of Publication:** 2016-05-31**Nation of First Publication:** United States**Authorship on Application:** Veronica Portillo; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Jesus Chavez, Jr.; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Eliodoro Barajo; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Mario Delgado; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Jesus Chavez; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Gabino Ayala; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Manuel Uzueta; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Pre-existing Material: sound recording.**Basis of Claim:** sound recording.**Rights and Permissions:** C.J. Ramirez, Hyphy Music, Inc., 2660 West Shaw Lane, Suite 110, Fresno, CA, 93711, United States, cj@hyphymusicinc.com**Copyright Note:** C.O. correspondence.

Basis for Registration: Collective work

Contents: El Campesino.

Solo Dios.

El Arbol.

El Paniqueado.

Dinero Manchado.

El Corrido Del Cach.

El Corrido De Camilo.

El Martelito.

Chicano Jaliciense.

Miguel Fuentes.

En Una Cajita De Oro.

Mis Hijos Son Mi Tesoro.

Marili.

Suplica De Un Padre.

Names: [Portillo, Veronica](#)

[Chavez, Jesus, Jr.](#)

[Barajo, Eliodoro](#)

[Delgado, Mario](#)

[Chavez, Jesus](#)

[Ayala, Gabino](#)

[Uzueta, Manuel](#)

[Hyphy Music, Inc.](#)



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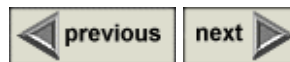
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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Copyright Number = SR0000863319

Search Results: Displaying 1 of 1 entries



Labeled View

Album Title: *Corridos de Poca M [performed by] Los Originales de San Juan.*

Type of Work: Sound Recording

Registration Number / Date: SR0000863319 / 2020-02-07

Application Title: Album Title: Corridos de Poca M [performed by] Los Originales de San Juan.

Title: Album Title: Corridos de Poca M [performed by] Los Originales de San Juan.

Description: Electronic file (eService)

Copyright Claimant: YELLOWCAKE, INC., Transfer: By written contract. Address: 701 E Canal Drive, Turlock, CA, 95380, United States.

Date of Creation: 2015

Date of Publication: 2015-02-24

Nation of First Publication: United States

Authorship on Application: Jesus Chavez, Sr.; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Rights and Permissions: YELLOWCAKE, INC., 701 E Canal Drive, Turlock, CA, 95380, United States, (209) 632-9938, (415) 735-8236, yellowcakecorp@gmail.com

Copyright Note: C.O. correspondence.

Basis for Registration: Collective work.

Contents: El Carlichí.

Sin Fortuna.

El Fantasma.

Javier Fernandez.

El Original.

Manuel Gonzalez.

Amanda Varela.

Cuando Se Nace Rico.

Mi Viejo.

Tan Solo Penas.

Names: Cravez, Jesus, Sr.

YELLOWCAKE, INC.



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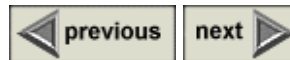
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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Copyright Number = SR0000864336

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Labeled View

Album Title: Nuestra Historia En Vivo [performed by] Los Originales De San...

Type of Work: Sound Recording

Registration Number / Date: SR0000864336 / 2020-02-11

Application Title: Album Title: Nuestra Historia En Vivo [performed by] Los Originales De San Juan.

Title: Album Title: Nuestra Historia En Vivo [performed by] Los Originales De San Juan.

Description: Compact disc (CD)

Copyright Claimant: YELLOWCAKE, INC., Transfer: By written contract. Address: 701 E Canal Drive, Turlock, CA, 95380, United States.

Date of Creation: 2017

Date of Publication: 2017-03-31

Nation of First Publication: United States

Authorship on Application: Jesus Chavez, Sr.; Domicile: United States; Citizenship: United States. Authorship: a sound recording of entire concert.

Rights and Permissions: YELLOWCAKE, INC., 701 E Canal Drive, Turlock, CA, 95380, United States, (209) 632-9938, (415) 735-8236, yellowcakecorp@gmail.com

Copyright Note: C.O. correspondence.

Contents: El Rey Del Cristal (En Vivo)

El Aguacatero (En Vivo)

El Patas de Diablo (En Vivo)

El Cara De Chango (En Vivo)

La Raza De Michoacan (En Vivo)

La Caspa Del Diablo (En Vivo)

La Troca Del Mono Negro (En Vivo)

Deje De Engordar Marranos (En Vivo)

El Jadrinero (En Vivo)

El Grande Michoacan (En Vivo)

Rey De Reyes (En Vivo)

Pakas De A Kilo (En Vivo)

La Muerte De Manuelon (En Vivo)

El Corrido Del Charapo (En Vivo)

Los Cuatro Amigos (En Vivo)

El Numero Gratis (En Vivo)

Names: [Chavez, Jesus, Sr.](#)
[YELLOWCAKE, INC.](#)



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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Copyright Number = SR0000866471

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Labeled View

Album Title: Desde La Cantina De Mi Barrio [performed by] Los Originales De...

Type of Work: Sound Recording

Registration Number / Date: SR0000866471 / 2020-02-11

Application Title: Album Title: Desde La Cantina De Mi Barrio [performed by] Los Originales De San Juan.

Title: Album Title: Desde La Cantina De Mi Barrio [performed by] Los Originales De San Juan.

Description: Electronic file (eService)

Copyright Claimant: YELLOWCAKE, INC., Transfer: By written contract. Address: 701 E Canal Drive, Turlock, CA, 95380, United States.

Date of Creation: 2017

Date of Publication: 2017-03-24

Nation of First Publication: United States

Authorship on Application: Jesus Chavez, Sr.; Domicile: United States; Citizenship: United States. Authorship: a sound recording of entire concert.

Rights and Permissions: YELLOWCAKE, INC., 701 E Canal Drive, Turlock, CA, 95380, United States, (209) 632-9938, (415) 735-8236, yellowcakecorp@gmail.com

Copyright Note: C.O. correspondence.

Regarding deposit: Special Relief granted under 37 CFR 202.20(d) of Copyright Office regulations.

Contents: 1. Mi Ultimo Deseo (En Vivo); 2. La Peda (En Vivo); 3. Paloma En Su Nido (En Vivo); 4. El Morralito (En Vivo); 5. Lineas de a Metro (En Vivo); 6. Naci Con Suerte De Rey (En Vivo); 7. El Tequilero (En Vivo); 8. El Clavo (En Vivo); 9. El Jabali (En Vivo); 10. Con Una Copa En Mi Mano (En Vivo); 11. La Cantina De Mi Barrio (En Vivo); 12. El Carlichí (En Vivo); 13. La Vida Prestada (En Vivo); 14. Fuiste Todo Para Mi (En Vivo); 15. Eladio Mora (En Vivo)

Names: [Chavez, Sr., Jesus](#)
[YELLOWCAKE, INC.](#)



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Help

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History

Titles

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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Copyright Number = SR0000863321

Search Results: Displaying 1 of 1 entries



Labeled View

Album Title: El Campesino [performed by] Los Originales De San Juan)

Type of Work: Sound Recording

Registration Number / Date: SR0000863321 / 2020-02-07

Application Title: Album Title: El Campesino [performed by] Los Originales De San Juan)

Title: Album Title: El Campesino [performed by] Los Originales De San Juan)

Description: Compact disc (CD)

Copyright Claimant: YELLOWCAKE, INC., Transfer: By written contracts. Address: 701 E Canal Drive, Turlock, CA, 95380, United States.

Date of Creation: 2016

Date of Publication: 2016-05-31

Nation of First Publication: United States

Authorship on Application: Jesus Chavez, Sr.; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Rights and Permissions: YELLOWCAKE, INC., 701 E Canal Drive, Turlock, CA, 95380, United States, (209) 632-9938, (415) 735-8236, yellowcakecorp@gmail.com

Copyright Note: C.O. correspondence.

Basis for Registration: collective work

Contents: El Campesino.

Solo Dios.

El Arbol.

El Paniqueado.

Dinero Manchado.

Corrido del Cach.

El Corrido De Camilo.

El Martelito.

Chicano Jaliciencia.

Miguel Fuentes.

En Una Cajita De Oro.

Mis Hijos Son Mi Tesoro!

Marili.

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Document Number: V9970D519

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Entire Copyright Document: V9970 D519 P1-19

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